



VCU Medical Center

Office of Health Innovation

Proposed Rule: Exchange Functions - Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions

Description: This proposed rule would implement certain functions of the Affordable Insurance Exchanges, consistent with title I of the Patient Protection and Affordable Care Act of 2010. These specific statutory functions include determining eligibility for and granting certificates of exemption from the shared responsibility payment for not maintaining minimum essential coverage as described in section 5000A of the Internal Revenue Code. Additionally, this proposed rule implements the responsibility of the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage by providing that certain coverage be designated as minimum essential coverage.

Major Provisions

Section 5000A(f) of the ACA defines minimum essential coverage as one of the following: (1) coverage under a specified government sponsored program, (2) coverage under an eligible employer-sponsored plan, (3) coverage under a health plan offered in the individual market within a State, (4) coverage under a grandfathered health plan, and (5) other health benefits coverage that the Secretaries of HHS and the Treasury recognize for purposes of section 5000A(f). This proposed rule addresses option (5) by providing criteria and a process by which these other types of coverage may be designated as minimum essential coverage.

The proposed rule lists the following as types of coverage that would be designated *per se* as minimum essential coverage:

1. Self-funded student health insurance plans.
2. Foreign health coverage.
3. Refugee medical assistance supported by the Administration for Children and Families.
4. Medicare advantage plans.
5. AmeriCorps coverage.

HHS proposes that state high risk pools also initially be designated minimum essential coverage, but reserves the right to assess and reevaluate this decision.

HHS states that in addition to the aforementioned plans, there could be other plans that provide health coverage comparable to the mandated minimal essential coverage. The proposal outlines a process for plan sponsors to take to have their plan's coverage be recognized as meeting the minimum requirements. The proposal explains that this recognition "would apply only to the particular plan sponsored by the submitting organization seeking recognition." CMS will maintain a public list of the types of coverage the Secretary has recognized as minimum essential coverage.

Qualifying Plans

Plans compliant with the "minimum essential coverage" requirement would include examples such as the government-sponsored programs for Medicare, Medicaid, the Children's Health Insurance Program, military medical coverage such as TRICARE, the healthcare plan for Peace Corps volunteers, and coverage under eligible employer-sponsored plans, coverage under health plans offered in the individual market within a state, and coverage under grandfathered health plans, according to the regulation.

The ACA gives HHS discretion to recognize forms of minimum essential coverage not listed in the statute, and HHS is proposing to exercise this discretion by recognizing self-funded student health plans, coverage of foreign nations from their country of citizenship, refugee medical assistance, Medicare Advantage plans, state high-risk pools, and AmeriCorps coverage as minimum essential coverage.

Exemptions

If an individual does not have minimum essential coverage in any month, the individual must pay the shared responsibility tax unless the individual qualifies for an exemption. There are nine exemption categories.

1. Members of religious groups that are conscientiously opposed to the acceptance of public or private insurance benefits and who subscribe to the teachings of those groups are exempt.
2. Members of health care sharing ministries are exempt. These entities must meet a number of requirements listed in the statute, including having been in existence since December 31, 1999, and are also identified on a list of such entities.
3. Incarcerated individuals who are confined after a final disposition of charges are exempt.
4. Immigrants not lawfully present in the United States
5. Members of federally-recognized Indian tribes are exempt.
6. Individuals who lack access to affordable minimum essential coverage
7. Individuals whose household income is below the tax filing limit for the taxable year for which the exemption is claimed
8. An individual is not liable for the penalty if the individual lacks minimum essential coverage only for one period in a given year that does not exceed three full calendar months.
9. Hardship exemptions

In order to claim an exemption based on religious beliefs or on hardship, the taxpayer that expects to be responsible for the shared responsibility payment must apply to and receive an exemption certification from the exchange. Exemptions for short coverage gaps and for lack of affordable coverage can only be claimed on an individual's tax return at the time of filing. Undocumented immigrants can also identify themselves as such through the tax filing process. The exemption for income below the filing limit can be claimed with a tax filing, but taxpayers are not required to file solely for this purpose.

Access to Affordable Coverage

An individual is not subject to the tax if the cost to the individual of coverage, including employer coverage and coverage through the exchange with the aid of premium tax credits, exceeds 8 percent of the individual's household income in any given month. An employee is treated as having affordable coverage if the lowest-cost self-only coverage the employee is offered does not cost the employee more than 8 percent of household income.

If two or more members of a household are employed and each offered health insurance, affordability is determined using the premium for self-only coverage for each individual even though the cost of covering all employees may exceed 8 percent of household income. In this situation, HHS is proposing that the individuals would qualify for the separate hardship exemption.

An individual who is not offered employer-sponsored coverage is not exempt from the penalty if the individual can purchase the lowest cost bronze level plan available through the exchange for 8 percent or less of household income, taking into account the maximum amount of any premium tax credit for which the individual and his or her family is eligible.